85-452

No. _____

Supreme Court, U.S.
FILED
AUG 14 1985
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

Robert T. and Lily Farley Ross Dale,

Petitioners,

- vs -

Commissioner of Internal Revenue,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Robert T. Dale
Lily Farley Ross Dale
Pro Se
54 Phaeton Drive
Penfield, N.Y. 14526

23pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether a U.S. Appeals Court can dismiss without hearing or reviewing an appeal on a civil case brought in a U.S. Federal Court (Tax Court), and whether such dismissal constitutes a denial of due process of law to the appellants.

2. Whether the Internal Revenue Service in cases brought before the United States Tax Court should be allowed to operate outside the laws of this country in not being subjected to the same civil procedures and laws and to the same extent as District Courts in civil actions tried without a jury, as in fact the 1954 Internal Revenue Code proscribes (vide infra).

3. Because appeal of a summary

judgment decision in a civil procedure is allowed in all other District Courts, whether denial and prohibition of all legal avenues of appeal in a summary judgment decision by the U.S. Tax Court constitutes abrogation of due process of law and violation of the Constitution of the United States of America.

4. Since the purpose of the Tax Court proceeding brought by the Internal Revenue Service against the petitioners is to deprive the petitioners of property, the question is whether or not the petitioners' lack of any avenue of appeal of the U.S. Tax Court decision on a summary judgment constitutes an attempt to deprive petitioners of property without due process of law.

5. Whether the U.S. Court of Appeals by refusing to regulate, control, or even so much as slightly supervise the activities of the Internal Revenue Service in its cases before the U.S. Tax Court is denying the civil rights of thousands and thousands of Americans who bring cases before the U.S. Tax Court.

6. Whether the Internal Revenue Service and its own personal "court", the U.S. Tax Court, is a "special court" in that rights guaranteed under the Constitution of the United States in all other forms of civil litigation in this country are not necessarily guaranteed in matters of taxation before the "Tax Court".

7. Whether the U.S. Court of Appeals

has acted in a manner to deny thousands of American citizens their Constitutional rights by refusing to review or hear certain decisions of the United States Tax Court which they would ordinarily and regularly review and hear if the matter came to them from a District Court.

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(1) If the U.S. Court of Appeals can dismiss a case before it, which is being appealed from a U.S. Federal Court decision (in this case, the U.S. Tax Court), without hearing or even reviewing it, thereby closing all avenues of appeal to the appellant and abrogating

his due process right.

(2)If all avenues of appeal have been closed by the U.S. Appeals Court dismissal in what is, in fact, nothing more than a civil case being appealed from a federal court, the U.S. Appeals Court has flagrantly and wantonly abrogated appellants' Constitutional right under the Fifth Amendment to the Constitution.

(3)If all avenues of appeal readily available for cases in District Courts are closed, simply because the matter comes from the U.S. Tax Court, then the Tax Court must be regarded as a "special court" not

subjected to the laws and the

Constitution of the United States!

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Appendix A - Notice of Dismissal of the

Appeal by the U.S. Appeals

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

Robert T. Dale and
Lily Farley Ross Dale,
Petitioners,

- vs -

Commissioner of Internal Revenue,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioners, Robert T. Dale and Lily Farley Ross Dale, respectfully pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered on May 23, 1985.

OPINION BELOW

The Court of Appeals for the Second Circuit entered its dismissal of the Appeal without giving any Opinion. A copy of this dismissal is attached as Appendix A.

JURISDICTION

On May 23, 1985, the Court of Appeals for the Second Circuit dismissed the Appeal without any written Opinion. Section 7482 (a) of the Internal Revenue Code of 1954 (26USC) privides in pertinent part the following: The United States Court of Appeals shall have exclusive jurisdiction to review decisions of the Tax Court, *** in the same manner and to the same extent as decisions of the District Court in civil actions tried without a jury; ***(Emphasis added).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment V:

> No person shall...be deprived of life, liberty, or property, without due process of law...
>
> (Emphasis added)

STATEMENT OF THE CASE

In February, 1985, petitioners timely appealed to the U.S. Court of Appeals for the Second Circuit from the U.S. Tax Court decisions on petitioners':

1. Motion to Impound Records 2. Objection to Motion to Consolidate and

3. Summary Judgment Motion which had been entered by the U.S. Tax Court on the Seventh day of November, 1984. On May 23, 1985, at the request of the IRS, the

United States Appeals Court dismissed the appeal without hearing the case or giving an opinion.

Section 7482 (a) of the IRS Code of 1954 (26 U.S.C.) provides, in pertinent part as follows:

> SEC.7482. COURTS OF REVIEW
>
> (a) Jurisdiction. - - The United States Courts of Appeals shall have exclusive jurisdiction to review the decisions of the Tax Court, * * * in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury; * * * (Emphasis added)

However, the IRS argued that the foregoing was not true, that is, the U.S. Court of Appeals does not have the right to review in the same manner and to the same extent decisions of the District Court in civil actions tried without a jury claiming that the only decision that the U.S. Appeals Court could review would be "an order specifying the amount of the deficiency."

The argument by the IRS--which was apparently upheld by the U.S. Appeals Court--(even though no opinion was given), contradicts Section 7482 (a) in the IRS Code of 1954 (26 U.S. C.). This is true because summary judgment motions are appealable in the U.S.

Appeals Court after an opinion on a summary judgment motion has been rendered by the District Court. Therefore the argument by the IRS contradicts Section 7482 (a) of the IRS Code of 1954 (26 U.S.C.). What is worse, this contradiction amounts to denial of due process of law and abrogation of Constitutional rights which are protected in decisions in Federal District Courts, other than the Tax Court. The U.S. Appeals Court dismissal in this case therefore places the IRS and the U.S. Tax Court outside of the laws of this country as a "special court" that does not have to adhere to the dicta of the U.S. Constitution as do other federal district courts.

REASONS FOR GRANTING THE WRIT

(1) The writ should be granted for one thing because the issue is very timely: The President of the United States in recent weeks has gone on national television to state that the IRS in this country is unfair and basically does act outside the law. This decision by the U.S. Appeals Court proves that Mr. Reagan is correct.

(2) The decision by the U.S. Appeals Court dismissing this appeal denies petitioners' due process of law allowed under the Fifth Amendment to the Constitution and abrogates petitioners' civil rights which are granted by other U.S. Federal District Courts (other

than the U.S. Tax Court).

(3) If the IRS Code is contradictory on this matter as, in essence, the IRS has argued, the law should be clarified so that appellants' constitutional rights are not abrogated.

(4) The IRS together with its "court", the U.S. Tax Court, should be required to behave itself under the laws of the Constitution just as other district courts are required to do. This is basically the belief reflected by Mr. Reagan's recent numerous speeches on the subject as well as by millions of Americans.

(5) There is no choice but to reverse the dismissal by the U.S. Appeals Court because it denies due process of law.

CONCLUSION

For the foregoing reasons the petitioner respectfully submits that a Writ of Certiorari should issue to review the judgment of the U.S. Court of Appeals.

Respectfully submitted

Robert T. Dale

Lily Farley Ross Dale

54 Phaeton Drive

Penfield, N.Y. 14526

August 13, 1985

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Robert T. and Lily Farley Ross Dale,

Appellants,

v.

Commissioner of Internal Revenue,

Appellee

Docket No. 85-4023

NOTICE OF MOTION

Motion to Dismiss and for Extension of Time to File Appellee's Brief

Motion By:

Glenn L. Archer

Assistant Attorney General

Tax Division
Department of Justice
Washington, D.C. 20530

Opposing Counsel:

Robert Dale

Lily Farley Ross Dale

54 Phaeton Drive

Penfield, N.Y. 14526

Judge or Agency whose order is being appealed:

United States Tax Court

Brief statement of the relief requested:

The Commissioner requests the appeal be dismissed for lack of jurisdiction because the order appealed is not a final decision disposing of the case before the Tax Court.

By:
Glenn L. Archer, Jr.

Assistant Attorney General

Appearing for:

Commissioner of Internal Revenue

It IS HEREBY ORDERED that the motion be and it hereby is granted.

J. Edward Lumbard

Ellsworth A. VanGraafeiland

Lawrence W. Pierce

(No titles given, see p. 13)

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...ites Court of Appeals
...E SECOND CIRCUIT

ROBERT T. and LILLY FARLEY ROSS DALE,
Appellants
v.
COMMISSIONER OF INTERNAL REVENUE,
Appellee

FILED
MAY 8 1985
...D

85-4023

NOTICE OF MOTION

Motion to Dismiss and for Extension ... Time to File Appellee's Brief

MOTION BY (Please print or type name of law firm and of attorney in charge of case)
GLENN L. ARCHER, JR.
Assistant Attorney General
Tax Division
Department of Justice
...Washington, D.C. 20530

OPPOSING COUNSEL (Please print or type name of law firm and of attorney in charge of case)
Robert Dale
Lilly Farley Ross Dale
54 Phaeton Drive
Penfield, NY 14526

Has counsel of opposing attorney:
A. been sought? ☐ Yes ☒ No
B. been obtained? ☐ Yes ☒ No
Has service been effected? ☒ Yes ☐ No
Is oral argument desired? ☐ Yes ☒ No
(Submission on briefs only)
Requested return date:
(See Second Circuit Rule 27(b))
Has argument date of appeal been set
A. by scheduling order? ☐ Yes ☒ No
B. by firm date of argument notice? ☐ Yes ☒ No
C. If Yes, enter date

EMERGENCY MOTIONS, MOTIONS FOR STAYS & INJUNCTIONS PENDING APPEAL
Has request for relief been made below? ☐ Yes ☐ No
(See F.R.A.P. Rule 8)
Would expedited appeal disposition avoid the need for this motion? ☐ Yes ☐ No
If No, explain why not.

Will the parties agree to maintain the status quo until the motion is heard? ☐ Yes ☐ No

Judge or agency whose order is being appealed:
United States Tax Court

Brief statement of the relief requested:
The Commissioner requests the appeal be dismissed for lack of jurisdiction because the order appealed from is not a final decision disposing of the case before the Tax Court.

Complete Page 2 of This Form

Sig: (Signature of attorney) Appearing for: (Name of party)
Commissioner of Internal Revenue
Appellee or Petitioner: ☐ Plaintiff ☐ Defendant
Appellee or Respondent: ☐ Plaintiff ☒ Defendant

Signature name to be printed beneath
GLENN L. ARCHER, JR.
Assistant Attorney General

Date
5/3/85

ORDER

Clerk to enter the order below

IT IS HEREBY ORDERED that the motion to and is hereby is granted denied

without costs.

UNITED STATES COURT OF APPEALS
FILED
MAY 2 ...

5/21
LWP JEL EVG

May 23, 1985

CERTIFICATE OF SERVICE

This is to certify that three copies of the foregoing Petition for Writ of Certiorari were served on attorney George Reynolds of the Internal Revenue Service by U.S. Mail on August 15, 1985 at the following address:

600 Arch Street

Philadelphia, PA 19106